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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE TRAVER,

Defendant and Appellant.

H041207

(Monterey County  
Super. Ct. No. SS120904A)

A jury found defendant Jesse Traver guilty of possession of a weapon by a prisoner. (Pen. Code, § 4502, subd. (a).)<sup>1</sup> The jury also found defendant had been convicted of six prior felonies: murder, second degree robbery, and four counts of attempted second degree robbery. (§§ 187, subd. (a), 211, 664.) The trial court sentenced defendant as a “Three Strikes” offender to a term of 25 years to life, consecutive to his existing terms.

Defendant had moved pretrial to dismiss his prior convictions under section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). Defendant appeals from the denial of that motion. He also argues in summary fashion that the trial court violated his due process rights and the Eighth Amendment.

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<sup>1</sup> Subsequent undesignated statutory references are to the Penal Code.

We conclude the trial court's denial of defendant's *Romero* motion was not an abuse of discretion, and we find no violation of his constitutional rights. Accordingly, we will affirm the judgment.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

### *A. The Current Offense*

In January 2012, defendant was housed at Salinas State Valley Prison. A correctional officer was watching inmates in the yard when he saw defendant abruptly change direction to avoid approaching staff. Based on defendant's conduct, officers ordered the inmates to lie down on their stomachs. An officer then approached defendant and handcuffed him. The officer took defendant to a holding cell, removed his handcuffs, and ordered him to remove his clothes. Defendant complied and handed his clothes to the officer. The officer found an "inmate-manufactured weapon" in defendant's pants. The officer testified that the object was made from metal round stock steel an eighth of an inch in diameter. It was six inches in length, with three inches of string-wrapped handle and three inches of "the business end" of the weapon. The object was sharp but was sheathed in a plastic tube with a cap.

### *B. Prior Offenses*

In 1995, defendant was convicted of murder (§ 187, subd. (a)), second degree robbery (§ 211), and four counts of attempted second degree robbery (§§ 211, 664). Each count included an enhancement for personal use of a firearm. (§ 12022.5, subd. (a).) Defendant committed the crimes in 1990, when he was 19 or 20 years old. The record holds little detail concerning the facts of defendant's prior offenses. The probation report stated that defendant approached a 50-year-old man on a street in North Hollywood and shot the man to death in the course of a botched robbery. The trial court imposed a term of life without possibility of parole for the murder, consecutive to nine years for the remaining counts and enhancements.

In 2003, defendant was convicted of possession of a weapon by a prisoner.  
(§ 4502, subd. (a).)

### *C. Procedural Background*

In pretrial proceedings for the current offense, defendant moved to dismiss all but one of his prior convictions under section 1385 and *Romero, supra*. The trial court denied defendant's motion on April 17, 2013. After defendant obtained a substitution of counsel, he filed a renewed *Romero* motion in January 2014. The prosecution filed written oppositions to both motions.

At a hearing in April 2014, the trial court denied the renewed *Romero* motion. The court set forth the basis for its ruling as follows: "I have read and considered the moving papers, the sealed document, the opposition papers, which this is the second time I've heard a *Romero* motion in this case. [¶] I do note that the current offense involves possession of a weapon, although not directly involving violence, it does have the great potential of a high degree of violence in this case. [¶] Defendant's prior criminal history is of a serious and violent nature. [¶] I've also considered the defendant's prison conduct or lack thereof in his current offenses and the prospects for leading a law-abiding life. [¶] I note the defendant has previously been involved with possession of weapons offenses in prison. [¶] Based upon the totality of the circumstances, in particular, the facts and circumstances of the prior strikes as well as the facts and circumstances of this case, [the] motion to dismiss pursuant to 1385, *People versus Romero*, is denied."

The case proceeded to trial in June 2014. The jury found defendant guilty of possession of a weapon by a prisoner. (§ 4502, subd. (a).) The jury also found defendant had previously been convicted of murder, second degree robbery, and four counts of attempted second degree robbery. (§§ 187, subd. (a), 211, 664.) On July 2, 2014, the court sentenced defendant to a term of 25 years to life, consecutive to the term defendant was already serving.

## II. DISCUSSION

Defendant contends the trial court abused its discretion in denying his *Romero* motion. He argues that the trial court failed to consider his medical condition and other mitigating factors, and that the court focused solely on his offense history. He summarily argues that the court violated his due process rights and that his sentence is disproportionate in violation of the Eighth Amendment.

The Attorney General contends the trial court acted within its discretion by denying the *Romero* motion and that defendant's sentence does not violate the Eighth Amendment.

### A. Legal Principles

The California Supreme Court held in *Romero* that the trial court, on its own motion, is empowered under section 1385, subdivision (a) to dismiss prior felony conviction allegations (i.e., prior strikes) in cases brought under the law known as the Three Strikes law. (*Romero, supra*, 13 Cal.4th at pp. 529-530.) The court's discretion, however, is limited to instances in which dismissing such strikes is in the furtherance of justice, as determined by giving “ ‘ ‘ ‘consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People . . .* ’ ’ ’ ” (*Id.* at p. 530, original italics.) Thus, the court may not dismiss a sentencing allegation “solely ‘to accommodate judicial convenience or because of court congestion[’ citation, or] simply because a defendant pleads guilty. [Citation.] Nor would a court act properly if ‘guided solely by a personal antipathy for the effect that the three strikes law would have on [a] defendant,’ while ignoring ‘defendant’s background,’ ‘the nature of his [or her] present offenses,’ and other ‘individualized considerations.’ [Citation.]” (*Id.* at p. 531.)

The Supreme Court later explained “the ‘concept’ of ‘furtherance of justice’ within the meaning of Penal Code section 1385[, subdivision] (a)[, which *Romero* had recognized as being] ‘ ‘ ‘amorphous.’ ’ [Citation.]” (*People v. Williams* (1998) 17 Cal.4th 148, 159 (*Williams*)). It noted that in deciding whether to dismiss a prior

strike “ ‘in furtherance of justice’ pursuant to Penal Code section 1385[, subdivision] (a), or in reviewing such a ruling, the court in question must consider whether, in light of the nature and circumstances of his [or her] present felonies and prior serious and/or violent felony convictions, and the particulars of his [or her] background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he [or she] had not previously been convicted of one or more serious and/or violent felonies.” (*Id.* at p. 161.) The sentence to be meted out to the defendant “is also a relevant consideration . . . in fact, it is the overarching consideration because the underlying purpose of striking prior conviction allegations is the avoidance of unjust sentences. [Citation.]” (*People v. Garcia* (1999) 20 Cal.4th 490, 500 (*Garcia*).)

If the court dismisses one or more prior strikes, its reasons for doing so must be stated in an order entered on the minutes. (*Ibid.*) Conversely, the trial court has no obligation to set forth its reasons for deciding *not to* dismiss prior strikes. (*In re Large* (2007) 41 Cal.4th 538, 546, fn. 6; see also *In re Coley* (2012) 55 Cal.4th 524, 560.) As our high court has explained: “The absence of such a requirement [that the court set forth its reasons for refusing to dismiss a prior strike] merely reflects the legislative presumption that a court acts properly whenever it sentences a defendant in accordance with the three strikes law.” (*People v. Carmony* (2004) 33 Cal.4th 367, 376 (*Carmony*).)

The granting of a *Romero* motion is “subject to review for abuse of discretion. This standard is deferential. [Citations.] But it is not empty. Although variously phrased in various decisions [citation], it asks in substance whether the ruling in question ‘falls outside the bounds of reason’ under the applicable law and the relevant facts. [Citations.]” (*Williams, supra*, 17 Cal.4th at p. 162; see also *Garcia, supra*, 20 Cal.4th at p. 503.) This abuse of discretion standard also applies to appellate review of the denial of *Romero* motions. (*Carmony, supra*, 33 Cal.4th at pp. 374-376; see also *id.* at p. 375: “ ‘Discretion is the power to make the decision, one way or the other.’ ”) It is the

defendant's burden as the party attacking the sentencing decision to show it was arbitrary or irrational, and, absent such showing, there is a presumption that the court " "acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review." ' [Citations.]" (*Id.* at p. 377.) Such a discretionary decision " " "will not be reversed merely because reasonable people might disagree." ' ' ' (*Ibid.*)

Placing in context the circumstances under which a court properly exercises its discretion in granting a *Romero* motion, the California Supreme Court has explained: "[T]he [T]hree [S]trikes law not only establishes a sentencing norm, it carefully circumscribes the trial court's power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational and proper. [¶] In light of this presumption, a trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances." (*Carmony, supra*, 33 Cal.4th at p. 378.) "Because the circumstances must be 'extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he [or she] squarely falls once he [or she] commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack' [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary." (*Ibid.*)

#### B. *Denial of the Romero Motions Was Not An Abuse of Discretion*

Defendant argues that the trial court failed to consider several mitigating factors. He points out that he suffers from Klinefelter's Syndrome, which has caused him to have enlarged breasts, depletion of musculature, and other feminine physiological characteristics. As a result, he claims he is a constant target of sexual harassment, sexual assaults, and other violent acts from fellow inmates. He contends the prison staff has

made his condition public, aggravating his suffering at the hands of other prisoners. He further points out that he was comparatively young at the time of his prior offenses, and that, while he has been caught in possession of a weapon while in prison on two separate occasions, he has never actually used a weapon against another prisoner or guard. In his filings below, defendant argued that, while in prison, he had abstained from gang activity, “separated himself from violence,” and completed Alcoholics Anonymous and other rehabilitative programs.

As the Attorney General notes, it appears the trial court considered defendant’s medical condition. In its ruling, the court stated that it had considered a “sealed document,” referencing defendant’s medical records, which the court had sealed to protect defendant’s privacy.

Regardless of his medical condition, defendant had no right to possess a weapon for self-defense as a prisoner. (*People v. Velasquez* (1984) 158 Cal.App.3d 418, 422.) Furthermore, the court had no obligation to set forth on the record all its reasons for denying the motion. (*In re Large, supra*, 41 Cal.4th at p. 546, fn. 6.) Nonetheless, the court set forth the basis for its ruling, including the violent nature of defendant’s criminal history and the potential for violence in the current offense. The court denied the *Romero* motion after examining all relevant filings and considering the “totality of the circumstances.” We conclude the trial court did not abuse its discretion in doing so. Accordingly, we find this claim without merit.

As to defendant’s claims under his due process rights and the Eighth Amendment, he offers little substantive argument to support them. He cites no authority for the proposition that a trial court violates the Constitution by failing to set forth on the record all relevant factors in denying a *Romero* motion. Nor does he cite any authority supporting his claim that his sentence is disproportionate under the Eighth Amendment. We conclude these claims are also without merit.

### **III. DISPOSITION**

The judgment is affirmed.



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Márquez, J.

WE CONCUR:

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Rushing, P. J.

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Grover, J.